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WATER MANAGEMENT IN ALBERTA

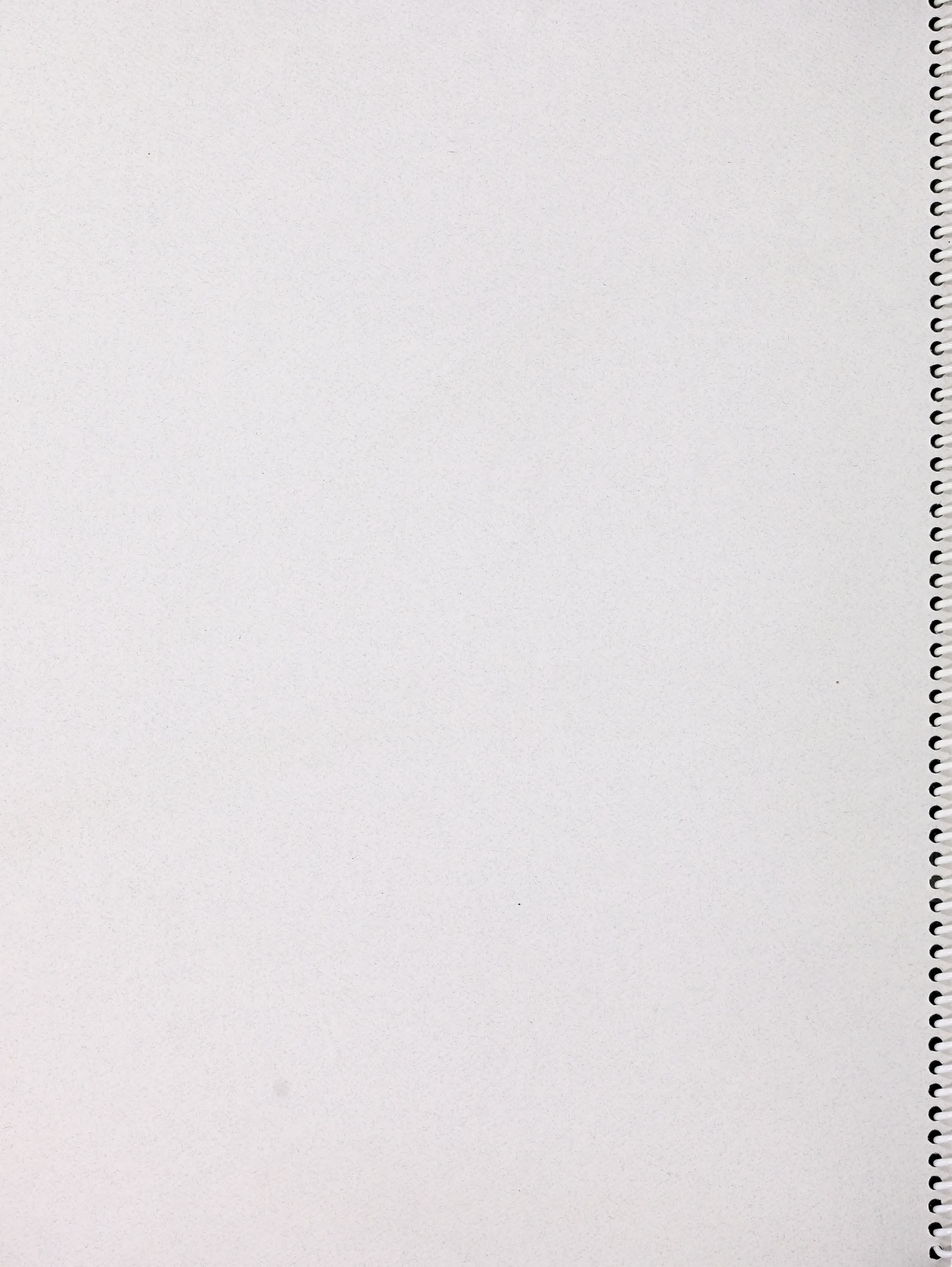
CHALLENGES FOR THE FUTURE

CANADIANA

FEB 21 1995

GUIDE

TO THE DISCUSSION DRAFT



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INTRODUCTION

On July 4, 1991, the Government of Alberta initiated a review of Alberta's current water management policies and legislation. The Alberta Government began the process of review with a firm commitment to present every opportunity for the public to provide advice on decisions affecting water management. A public consultation process, coordinated by Alberta Environmental Protection, the Alberta Water Resources Commission and the Environment Council of Alberta was developed so that Albertans could indicate what they wanted to see in water management policy and legislation in Alberta.

During the initial phase of the review, a variety of processes were used to obtain input from the public in response to a discussion paper and a series of background papers. Albertans responded, providing valuable comments and advice on a variety of water management issues.

All the input received from these submissions, along with the input received from public workshops, open houses, a Futures Workshop held by the Environment Council of Alberta and a public survey, was used to prepare this discussion package, which includes the Guide, the Discussion Draft and the Framework: Streamlining the Regulations. In this next phase of the public consultation process the Government is looking for comments from the public on this package.

To ensure full public review and comment on this package, a number of opportunities for Albertans to contribute will be available. A guide to submissions has been provided to help you comment on the discussion package. As well, a toll-free number has been provided to assist with comments and enquiries. Public review sessions will be scheduled later this year. The goal is to introduce new legislation after Albertans have had an opportunity to provide their input on water management.

Comments and enquiries:

Contact:

**Water Management Policy and Legislation Review
c/o ALBERTA ENVIRONMENTAL PROTECTION
OXBRIDGE PLACE, Floor 3
9820 - 106th ST.
EDMONTON AB
T5K 2J6**

or Phone: 1-800-661-5586 (toll free)

In Edmonton or out of province Phone: (403) 429 - 1385

HOW TO USE THIS GUIDE

What You Should Know

- ▶ The first part of this Guide, "Vision and Principles", includes an overall vision and broad principles to guide the development of water management policies and legislation. That vision and those principles are reflected in the more detailed policy directions in the Guide, and in the provisions of the Discussion Draft and the Framework.
- ▶ Input received from the public in the first phase of public consultation is italicized in the Guide.
- ▶ Public input is being requested on a number of policy questions which are identified by boxes throughout the Guide. Final water policy will be based on the input received on these issues.
- ▶ Written submissions addressing the policy questions, the Guide, the Discussion Draft and the Framework are welcome.
- ▶ All submissions will be accepted, but the following suggestions will help us with the efficient recording and review of public comments.
- ▶ All submissions are public documents and will be available for viewing in the library of Alberta Environmental Protection.
- ▶ Additional information, including background papers on water management, is available by calling Alberta Environmental Protection's toll free line (1-800-661-5586).

Making Your Submissions

- ▶ To help us with the recording of your submission, we suggest that you clearly indicate at the beginning of each paragraph the topic of the paragraph and limit the paragraph to that topic.
- ▶ Your submission may wish to address: any strengths and weaknesses you see in the Guide, the Discussion Draft or the Framework; concerns about implementing the policy or the draft legislation; areas that are difficult to understand; and any discrepancies you see between principles, policies and draft legislation.

HOW TO USE THIS GUIDE

- ▶ On your submission, please indicate your name, your address and, if appropriate, your organization. If you list your organization, please state whether the submission represents your organization's thoughts or your own.

How Submissions Are Used

- ▶ Alberta Environmental Protection, through the public consultation process, will receive public comments from various sources, including open-houses, workshops and written submissions.
- ▶ All public comments will be summarized by topic areas listed below. Using reports based on these topic areas will assist the Government in reviewing specific issues.
- ▶ Please mail your submission to:

Water Management Policy and Legislation Review
c/o Alberta Environmental Protection
OXBRIDGE PLACE, Floor 3
9820 - 106th ST.
EDMONTON, AB
T5K 2J6

Some Topic Areas To Consider

Appeal Process	New Licences-Term, Review & Renewal
Approvals	No Export of Water
Definitions	Planning
Direct Charges for Water or Royalties	Potable Groundwater
Enforcement	Priority of Rights
Environmental Assessment Process	Programs and Projects
Existing Rights	Public Involvement
Flood Damage Reduction	Riparian Rights
Household and Related Purposes	Transferability
Instream Protection	Use of Works Agreements
Interbasin Transfer	Water Conservation
Lake Management	Water Quantity/Quality
Licence Fees	Wetlands Management

VISION AND PRINCIPLES

Alberta has a long history of water management, dating back almost 100 years. In 1931, the Alberta *Water Resources Act* (the *WRA*) was enacted replacing federal legislation from 1894. This early provincial legislation remains essentially the same, 60 years later. The Government of Alberta is committed to having water management policies and legislation that reflect today's circumstances and prepare us for the challenges of tomorrow. Early in the review, five key challenges were outlined in the discussion paper "Water Management in Alberta - Challenges For the Future". The key challenges identified for effective water management were: planning for the future; using our water resources wisely; protecting our surface water and groundwater resources; involving the public in decision-making; and shared responsibility and cooperating with other governments.

The following vision and principles were developed to meet these challenges, based on both the long history of water management in the province and on public comments about the future of water management. The vision and principles have, in turn, been used as a guide for the policy directions described in this Guide and reflected in the provisions of the Discussion Draft, and the Framework.

VISION

All Albertans are stewards of the province's water resources. We have the privilege of using water to ensure the environmental, economic and social health of the province. We have the responsibility to live within the capacity of the natural environment to sustain water resources in the present and the future.

WATER MANAGEMENT CHALLENGES AND PRINCIPLES

Planning For The Future

Sustainable water management means that water must be managed appropriately to meet current and evolving needs without compromising the ability of future generations to meet their own needs. Most of the public comments endorsed the development of a long-term vision or strategy for water management. The public realized, however, that long-term planning for sustainable water management is not an easy task, and "no single solution will meet current and future needs". Planning for the future requires an integrated approach which has a much higher chance of long-term success.

VISION AND PRINCIPLES

The province's water resources will be managed as a sustaining element of our environment, to ensure a healthy environment, a healthy economy and a high quality of life in the present and the future.

The province's water resources will be managed on a river basin basis. River basin plans reflecting local, regional and provincial needs and priorities will be an integral component of water management decision-making.

Using our Water Resources Wisely

The issue of how to allocate water rights among users, while at the same time safeguarding aquatic ecosystems, provoked a wide variety of public comments. Many people were concerned that there must be a means to meet still greater future consumptive and instream flow needs in Alberta's watercourses. While some people felt there is a need to review licences periodically, it was agreed that water users must have secure access to water, especially in cases where expensive capital commitments have been made. Water conservation was seen as a key element of sustainable water management, although there is no consensus yet on approaches to achieve water conservation. While most people supported the development of water management projects and programs, this issue was clearly influenced by regional concerns and conditions. The public also made it clear that they want projects to maximize benefits, be economically justifiable and have minimal environmental impacts.

As water is a renewable but limited resource, all water users have an important responsibility for the wise and efficient use of water. The Government of Alberta has a responsibility to encourage water conservation.

Comprehensive and flexible systems based on sound planning, regulatory actions and market forces will be used to support wise allocation of water. These systems must recognize existing water rights, encourage efficient use of water for human needs and address the need for protection of the aquatic ecosystem.

The Government of Alberta will not be party to any undertaking to divert water beyond Canadian borders.

VISION AND PRINCIPLES

Protecting Our Surface Water and Groundwater Resources

Albertans feel strongly about the protection of Alberta's water resources from pollution, overuse and degradation. The high value of water as a "precious limited commodity" was stressed, and a new policy and legislative focus on sustainable water management and the protection of the ecological integrity of aquatic ecosystems was suggested. The need to protect instream flow needs was strongly supported by the public, although there were varying suggestions on what should be considered when establishing meaningful instream flow levels. Albertans realize that almost every aspect of a project can have either direct or indirect environmental impacts, both positive and negative. Considering the full scope of environmental costs at the earliest opportunity in project planning will often save costs as compared to remedial actions. Albertans also expect vigorous enforcement of water management laws, fairly and consistently applied.

The province's water resources will be managed for water quality and quantity together, recognizing the interdependence of surface water, groundwater and land.

The province's water resources will be managed for instream flows to maintain and improve the long-term health of river ecosystems, and to ensure the flow and quality of Alberta's rivers and streams are adequate for human needs.

The province's lakes will be managed using a cooperative approach which recognizes the wide range of demands placed on lakes and the need to protect the long term viability of lake ecosystems.

All major water management projects will be subject to the Environmental Assessment Process to determine the sustainability of these projects and whether potential adverse impacts can be mitigated.

Enforcement action will be applied firmly, fairly and consistently to all parties, including individuals, industries, municipalities, Crown corporations and government agencies.

VISION AND PRINCIPLES

Involving The Public In Decision-Making

The public delivered a clear message regarding involvement in making decisions about managing Alberta's water resources: they want to be involved. Successful public participation depends on the contributions of well-informed people. Such participants "develop a balanced perspective of issues", "make informed decisions" and "provide meaningful input". The public wants firm commitment to making public education an integral part of future policies and programs.

Public education and information sharing are recognized as integral components of effective public involvement.

Clear, meaningful opportunities for public participation and advice in water management planning programs and decision making will be provided.

Shared Responsibility and Cooperating with Other Governments

Albertans strongly support the idea that water in Alberta has to be managed in complete cooperation with other levels of government, and with governments of other provinces and territories. They advocate a "one-window" approach to water resource management under the jurisdiction of Alberta Environmental Protection, and better cooperation and coordination among provincial departments.

The Government of Alberta will cooperate with the federal Government, the governments of other jurisdictions and local governments through ongoing liaison, agreements, programs and projects.

Cooperation among relevant government departments is necessary to ensure an integrated approach to water management planning, programs and decision-making.

The Government of Alberta will take a leadership role, while sharing responsibility, to ensure that there is adequate and ongoing information on the nature of the water resource, to reduce risks from natural events such as flood or drought and to ensure a high level of environmental quality.

CONSULTATION, COOPERATION, EDUCATION AND ADMINISTRATION

ADMINISTRATION

The Minister of Environmental Protection is responsible for administration of water conservation and management legislation in Alberta. The Minister's powers and duties are set out in the Discussion Draft.

PUBLIC INVOLVEMENT

Albertans sent a clear message that they wanted to be involved in water management. Specifically, Albertans are concerned that in order to have effective public participation, the public must be well-informed and educated on the intricacies of water management. As well, Albertans want a decision-making process that allows for various forms of public participation, beginning at the earliest stages of the process and continuing throughout.

Albertans feel that public participation should be combined with comprehensive education programs and policies. Some people suggested education in the areas of stewardship, responsible water use, conservation and recycling of water, reduction of water use and the importance of water quality and quantity would be useful.

The Alberta Government is committed to providing the public every opportunity to understand and provide advice on water management decisions. Information sharing and effective public involvement in decision-making have been included as fundamental principles for water management in the province.

Ways in which the Discussion Draft encourages and promotes information sharing and public involvement in decision-making include:

- ▶ Commitment to Education
- ▶ Establishment of Advisory Committees
- ▶ Public Involvement in the Planning Process and Instream Protection
- ▶ Public Involvement in the Environmental Assessment Process
- ▶ Public Input into the review of Approvals, Licences and Transfers
- ▶ Provision of an Appeal Mechanism

PLANNING AND ENVIRONMENTAL ASSESSMENT

WATER MANAGEMENT PLANS

Albertans stressed that they would like to see long-term planning provided for in legislation. The public felt planning activities should be used to guide decision-making and should include consideration of other resource management practices, particularly those involving lands and forests. Albertans also recommended water quantity and quality issues and protection of instream flows be addressed in the planning process. Many people suggested that the management of water in Alberta should be conducted on a river basin basis to reflect regional needs and priorities. Some people supported legislated river basin plans to limit or remove the potential for 'ad hoc' decision-making.

Water management plans assist in achieving the long-term conservation, which includes preservation and protection, and wise use of water on a river basin, regional or site-specific basis. This includes plans which specifically address issues of groundwater management. The purpose of the planning process is to ensure that water is conserved and managed to meet current and future needs by encouraging an integrated approach to water, land and other resource planning. This process will consider factors such as regional and local needs and existing water uses and provides an opportunity for the public to share information and advise on decisions that affect water resources and planning.

A water management plan can include overall goals, objectives and guidelines related to both water quality and water quantity. Examples of issues addressed in water management plans are maintaining good water quality and instream needs, policies regarding industrial effluent discharges and water re-use, guidelines for irrigation expansion and water allocation limits. Alberta Environmental Protection has undertaken a number of major water resource planning activities such as: the Cold Lake-Beaver River Water Management Plan and the South Saskatchewan River Basin Planning Program.

Smaller-scale plans can focus on more specific issues such as controlling rates of drainage development in headwaters of smaller basins. The Buffalo Bay-Horse Lakes planning program is one example of planning on this scale.

PLANNING AND ENVIRONMENTAL ASSESSMENT

1. Authority for Water Management Planning

Albertans showed strong support for public involvement in river basin planning. Some people felt involvement should be limited to stakeholders and the people directly affected, while others suggested that all members of the public be involved. Most Albertans felt the public should be involved early in the planning process.

The Discussion Draft authorizes the development of water management plans for both groundwater and surface water and allows that an integrated approach to planning which considers water, land and other resources be taken. Opportunity is provided for the public to share information and provide advice on decisions affecting water resources and planning. The Minister may establish water management areas to develop or implement a water management plan.

Water management plans may be formally designated as approved water management plans by the Minister or the Lieutenant Governor in Council. Any approved water management plan must be considered by the Director in issuing an approval, preliminary certificate, licence, approving a transfer or establishing a moratorium. Any approval of a water management plan, amendments to, or cancellation of the approval of a plan requires that notice be given.

2. Reservations/ Moratoria

Albertans suggested that when planning is incomplete, there should be a set of guidelines available that will assure compliance with policy.

In areas where plans have not been prepared or are incomplete, decisions will be made based on the general water management policy and the best available information. The Discussion Draft allows the Lieutenant Governor in Council to reserve unallocated water where necessary. This provision can be used: to defer decision-making on allocations in a basin until a basin plan is complete; to save water for a particular purpose; and to carry out a study or provide for an instream need or instream objective (see Instream Protection pp. 12-15).

Where the Director is of the opinion that allocation in a specific basin should cease until additional information can be gathered or steps be taken to reserve water, a moratorium may be imposed. A moratorium

PLANNING AND ENVIRONMENTAL ASSESSMENT

would involve freezing the application system so that applications will not be accepted for a set period of time.

3. Integration of Resource and Water Planning

Albertans suggested integrating all land use/resource plans into river basin plans. It was suggested these objectives could be achieved through better coordination between provincial departments or through the creation of some sort of regional authority or river basin commission. Other people favoured incorporating water management objectives into land use by-laws or regional plans and restricting or controlling land use to assure protection of water resources.

Through restructuring within the Alberta Department of Environmental Protection, the Government has taken steps to ensure integration between resource and water management planning activities. The Discussion Draft further supports coordination between resource and water management planning.

4. Water Quantity and Quality

The protection of water quantity and quality is of major importance to Albertans. Albertans strongly supported the integration of water quantity and quality. Some people felt legislation is the best way to integrate water quantity and quality. There was some disagreement about how this should occur. Many people felt water management policy and legislation should include both water quantity and quality criteria, objectives and enforcement requirements. Most people felt that water quantity legislation could stand alone as long as there are adequate policies and standards in place to ensure high water quality is maintained.

In general, water quality is governed by the Alberta *Environmental Protection and Enhancement Act* (EPEA) which includes provisions on development of objectives, guidelines and regulations, requirements for approvals, control of the release of substances and protection of drinking water supplies. However, there is a need to ensure integration of water quantity and water quality considerations in water legislation. The Discussion Draft supports this integration through the referral of activities or diversions to EPEA for consideration of water quality concerns, the planning process, the Environmental Assessment Process, instream protection and the data collection process.

PLANNING AND ENVIRONMENTAL ASSESSMENT

5. Water Conservation and Management Objectives and Guidelines

The Discussion Draft allows for water conservation and management objectives and guidelines, expressed in quantitative and qualitative terms, to be established for the purposes of implementing instream needs, protecting a water body or an aquatic or riparian ecosystem, protecting direct human uses, managing fish or wildlife and achieving water conservation or management goals. Public consultation is a key element in preparing water conservation and management objectives and guidelines.

6. Instream Protection

Determining instream needs and water conservation and management objectives (for the purposes of implementing instream needs, protecting a water body or an aquatic or riparian ecosystem, protecting direct human uses and managing fish or wildlife) is a crucial part of the ecosystem approach used for achieving instream protection and overall water management planning in Alberta. These specific types of objectives are referred to as "instream objectives" in the Guide.

INSTREAM PROTECTION

The need to protect instream flow needs was strongly supported by Albertans. Many people also supported the protection of instream flow needs for aesthetic and recreational purposes. Others mentioned the importance of water quality, waste assimilation and maintenance of wetlands. Almost all Albertans who commented on this issue agreed there has to be some level of protection for instream flows. Even though the majority of the public mentioned that sufficient instream flows should be recognized to ensure the health of the watercourse, there was a portion of the public that was concerned about the danger of instream flow needs being set too high or threatening existing water rights.

"Instream needs" are the water quantities and qualities needed to maintain the ecological integrity of rivers, lakes and riparian environments and meet the demands for other uses of water, including fisheries protection and recreational uses. The Discussion Draft includes a broad definition of instream needs.

Instream objectives refer to the desired apportionment of water for instream protection that result from the water management planning and

PLANNING AND ENVIRONMENTAL ASSESSMENT

decision-making process. Depending on circumstances, it may not be possible to fully satisfy the water requirements for instream needs and meet current allocations, so a compromise must be reached. This compromise would be determined through public consultation as part of a planning process and would result in the setting of an instream objective.

Work is progressing on both the scientific determination of instream needs and on water management planning and consultation processes to establish instream objectives.

Process for Determination of Instream Needs and Instream Objectives

The determination of instream needs is a separate task from the decision to make an instream objective. The goal in determining an instream need is to identify requirements for the ideal level of flow, quality of water and water levels that would provide full instream protection. The goal in determining an instream objective is to assess existing demands on a water body and to determine the level of instream protection that is practical, taking those existing demands into account. This determination will include an assessment of the risk and the impact of shortages. An acceptable level of risk will depend on location and circumstances. Instream objectives will be developed in consultation with the public. A process for reviewing and updating instream needs and instream objectives must be established.

Priorities for Instream Needs and Instream Objectives

When establishing priorities for determining instream needs and instream objectives, consideration must be given to areas under pressure because of conflicts between uses. Rivers that are not fully allocated must also be addressed to provide some guidance for future allocations. In some cases, a watercourse will have an important or unique instream need that should be protected.

Using a combination of these factors could ensure the most critical streams are addressed first. Setting such priorities is important.

PLANNING AND ENVIRONMENTAL ASSESSMENT

Implementation of Instream Protection

Instream protection could be accomplished through any or all of the following:

- ▶ Regulations and conditions on licences Terms and conditions in licences can be used to require that a specified amount of water remains in the watercourse, as is the case now with some licences. Regulations, such as the South Saskatchewan Basin Water Allocation Regulation, can also be used for instream protection.

Do you think terms and conditions in licences should be used for instream protection?

- ▶ Reservations of water for instream protection The *WRA* provides power to "reserve any unallocated water" for later use according to "the best public interest". This reservation power, clarified in the Discussion Draft, could be used for instream protection.

Should reservations of water be used for instream protection?

- ▶ Licences for instream needs or instream objectives for both new and transferred licences The option to use licences for instream needs or instream objectives raises the question of who should be able to apply for such licences. These licences would be issued to the Alberta Government.

Should there be licences for instream protection?

- ▶ Water management policy Instream protection can also be accomplished through policies which would be considered in any decision process, such as licensing decisions.

Do you think instream protection should be done through water management policy?

- ▶ Transfers Sometimes, the instream objectives are not adequate to provide the necessary level of instream uses. In such situations, the transfer of water rights will be promoted so that the instream objectives to be raised to an acceptable level over time. More

PLANNING AND ENVIRONMENTAL ASSESSMENT

information on transfers of water rights is found on pages 25-28.

Should transfers be used as means of instream protection?

One or more of the above mechanisms may be useful to deal with different situations. Existing water rights will be respected regardless of what mechanism is used.

MANAGEMENT OF WETLANDS, LAKES AND HERITAGE RIVERS

Albertans expressed concern about wetlands management and supported better understanding and recognition of the value of wetlands. Most people felt wetlands should be protected through management and immediate implementation of a wetland management policy. The public felt the various types and distribution of wetlands should be reflected in different approaches for different parts of Alberta. The public also asked for clarification regarding ownership of wetlands. Albertans also suggested the incorporation of wetland planning into existing land and water planning programs.

Albertans held very polarized views about whether the government should develop active lake management policies and practices. Some Albertans were against active lake management by the Government. They felt lakes should be left to nature and worried about proceeding with large lake management projects. Some people felt that indirect lake management would be the best solution. Some specific suggestions included: land-use controls, sewage treatment, minimizing agricultural run-off and controlling pesticides and fertilizers around lakes. There were comments that active lake management should only occur on intensely used lakes. Others suggested focus should shift from just lakes of provincial significance to include lakes with only regional or local significance.

Wetlands are a precious natural resource that provide such benefits as flood control, an on-farm water supply, improved water quality, groundwater recharge, wildlife habitat, and recreational and aesthetic enjoyment.

The Alberta Water Resources Commission, in cooperation with provincial departments, prepared a Recommended Wetlands Policy for Alberta for the settled areas of Alberta. It was circulated for public review and comment and was subsequently approved by the Commission. The proposed policy goal is: "to sustain the social,

PLANNING AND ENVIRONMENTAL ASSESSMENT

economic and environmental benefits that functioning wetlands provide, now and in the future". The proposed policy also sets out strategies for education and awareness, wetland management, program delivery and legislative review.

The Discussion Draft provides the Minister with the authority to establish programs related to wetlands policy. The Discussion Draft allows for the implementation of wetlands policy through provisions which support education, research and the development of guidelines.

Alberta Environmental Protection is actively involved in monitoring lake levels and water quality, regulating the disturbances of beds and shores, authorizing lake stabilization structures, resolving conflicts and responding to concerns regarding flooding or drought.

The Government intends to take a stronger leadership role in lake management. The objective is to promote lake management science and provide guidelines on analyzing problems, identifying solutions and ensuring all stakeholders are considered. The guidelines will be regularly reviewed and revised in response to new technology. Lake management decisions, based on sound information and a comprehensive approach, should be consistent and easily understood. The Discussion Draft allows for the implementation of lake management policies through provisions which support education, research and the development of guidelines. Any effects on lakes would be subject to the approval or licensing process.

In 1983, a joint federal/provincial/territorial program called the Canadian Heritage Rivers System (CHRS) was launched. The objectives are to recognize rivers having natural, cultural and/or recreational heritage values of national significance. Responsibility for management of a Canadian Heritage River rests entirely with the government in whose jurisdiction the river is located. Designation of a river to the cultural program requires that the river be managed to conserve the outstanding natural, cultural and recreational heritage resources for which it was nominated.

In the Spring of 1994, Alberta joined the CHRS Program. Work is beginning to complete a systems study of all major rivers in the province to determine which rivers meet the criteria for designation.

PLANNING AND ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL ASSESSMENT PROCESS

Albertans were firm about the need for proper Environmental Impact Assessments (EIA's) prior to decisions to proceed with any project involving rivers, lakes, wetlands and river reaches or flow basins. Most Albertans felt that Environmental Impact Assessments should be integral to planning any development project, whether the proponent is the government or the private sector, and that cumulative impact of all industrial development in the area be assessed. Some people specifically suggested that the criteria for triggering a formal assessment should be set out in legislation. Almost all Albertans felt that EIA's should be mandatory for almost all water management projects.

The Environmental Assessment Process (EAP), as established in the Alberta *Environmental Protection and Enhancement Act* (EPEA), supports environmental protection and sustainable development and provides for public involvement in the review of proposed activities. Projects having a potential impact on water resources will be assessed in accordance with EPEA and its regulations.

The EAP determines if an EIA Report is required and outlines how it should be prepared. Regulations accompanying EPEA list major projects which require a mandatory EIA report. Three types of water management projects are included in the mandatory list: dams greater than 15 metres high, water diversion structures and canals with a capacity greater than 15 cubic metres per second, and reservoirs with a capacity greater than 30 million cubic metres.

Other types of water management projects may be reviewed through the EAP, depending on the project's potential environmental impacts. The majority of water management projects fall into this non-mandatory or discretionary category.

SURFACE WATER AND GROUNDWATER RIGHTS

Albertans had a variety of views on how to allocate water rights among users, while at the same time safeguarding aquatic ecosystems. Many people felt there must be a means to meet still greater future consumptive and instream flow needs in watercourses. The public recognized that there must also be a means of resolving conflicts during times of shortage.

The current system of obtaining licences from the Crown for diversion and use of water will continue to be a fundamental part of the legislation. This system, as set out in the Discussion Draft, includes the protection of existing rights, the issuance of new licences, the recognition of household and related uses of water and the ability to transfer licences.

A priority system is necessary to manage all water demands. The priority system in the Discussion Draft reflects provisions in the *WRA* and new ideas from the public.

LICENSING AND EXISTING RIGHTS

As the Crown owns all the water in the province, a licence to divert water must be obtained. The Discussion Draft will continue the current licensing system with some alterations. For further detail on licences and the licensing process see the Approvals and Licences part of this Guide.

Albertans had differing opinions about how existing rights should be treated. Many people felt that existing rights and licences must be respected and cannot be changed. In contrast, some people felt that existing rights should be reviewed. Those who wanted existing rights to be respected worried that people who had made significant capital investments should have a secure supply of water protected. As well, some people felt that if existing water rights were diminished, there should be compensation.

At the beginning of the review process, the Government made a commitment to protect existing water rights in good standing. This recognizes the long history of water rights in Alberta and the significant investments which have been made in relation to those water rights. The Discussion Draft clearly states existing rights will be protected.

Where there are serious conflicts between existing demands for water, the Discussion Draft provides various mechanisms to address these conflicts. Examples include provisions for the transfer of licences and agreements among licence holders.

SURFACE WATER AND GROUNDWATER RIGHTS

HOUSEHOLD & RELATED PURPOSES

Generally, Albertans felt the current definition of "domestic purposes" is not clear and is confusing. The public also expressed concern that domestic water users are not legally protected from conflicts with large licensed users and suggested new legislation should enshrine the protection of domestic water uses. Albertans preferred this protection be provided without the need to obtain a licence.

The Government recognizes the need to protect water used for household and related purposes. The Discussion Draft confirms "household and related purposes", previously "domestic purposes", have priority over other uses. It also continues to allow household and related purposes from surface and groundwater sources, to be used without a licence. The Discussion Draft proposes that household and related purposes be defined as a diversion of "up to 50 cubic metres (10,000 gallons) per week and to a maximum of 2,500 cubic metres (2 acre-feet) of water per year per household for the purposes of human consumption, sanitation, fire prevention, watering of stock and irrigation of a garden, lawn and trees".

Is there another definition of "household and related purposes" that you think provides a reasonable level of protection?

The definition attempts to strike a balance between protecting domestic uses without impacting other users.

Should the definition differ in various parts of Alberta to reflect differences in climate and water supply?

There are many surface and groundwater uses of water between 2,500 cubic metres (2 acre-feet) per year and 6,200 cubic metres (5 acre-feet) per year. Examples include stock watering and market gardening, which are currently considered domestic purposes that do not require licences. The volumes of water here pose a greater potential for conflict between water users. One option is to require licences for these diversions of water, with the same rights and responsibilities as other licences, including priority based on "first in time, first in right". A more streamlined licensing process could be used. There could be a specified period of time to allow existing water users to obtain a licence based on the date the use was started and to enjoy the advantages of the priority system.

SURFACE WATER AND GROUNDWATER RIGHTS

A second option would allow licences to be issued for this type of diversion on a voluntary basis. A transition period would allow these users to obtain a licence based on the date the diversion started. If a water user decided not to get a licence, the user would not be in contravention of the *WRA* nor would the user be protected by the *WRA*. This option provides a way to address different local and regional water needs. The transition period gives current water users enough time to determine the best option to protect their domestic use of water.

Once the transition period passed, users of between 2,500 and 6,200 cubic metres per year could still get a licence. However, the priority of any licence applications received thereafter would be based on the application date. Under this option, existing water users could apply for a licence to establish a priority before new users entered the area. Any use of water over 6,200 cubic metres per year from both surface water and groundwater sources would require a licence.

Which option do you think is the best way to protect water users of between 2,500 and 6,200 cubic metres (2 and 5 acre-feet)? Are there other ways to address different local and regional conditions?

PRIORITY OF RIGHTS

The majority of Albertans supported the need for a set of priority of rights, either by maintaining the existing priorities or by changing them. There was no consensus from the public as to whether the "first in time - first in right" principle should be maintained. Many people were confused by the priority system and expressed support for an existing system they believed is based on preference of use rather than priority in time.

Albertans revealed that there is also confusion regarding the current use of priorities based on preferences of use. Many people believe that preferences of use actually take precedent over priority in time. Many suggested priority lists to rank the importance of uses during shortages, with instream flow needs and domestic uses often seen as the top priority. Although the public showed strong support for having priorities based on the nature of use, there was no consensus as to how these priorities should be determined.

Water supplies are highly variable. There are wet years and dry years and these can vary in severity and duration.

When supplies are plentiful, conflicts do not arise. At any given time, however, there may be "general shortages" in water supplies. These general shortages may take many forms, depending on the number of

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water users, the nature of the water supply, the amount of water available and the location. Determining rules based on preferences of use that could apply to all of the many different "general shortages" that could occur would be very difficult. Still, some level of protection is needed for household and related purposes and for instream protection. At other times, there are critical or "emergency" shortages in water supply. Criteria to determine when an emergency exists could include severity of drought, length of drought, number of water users affected and potential economic and environmental impacts. Under these circumstances, special rules may apply.

The following outlines the priority system under the *WRA* and the Discussion Draft for addressing both general and emergency shortages, instream protection and household and related purposes.

Current Practice

The current practice is for water rights to be based on the "first in time, first in right" principle. The priority is determined by the date the application for a water licence is filed. A unique priority number is assigned to each application on the date a completed application is received.

Under the *WRA*, the "first in time, first in right" principle is superseded when an emergency is declared by the Lieutenant Governor in Council, who can then designate the purposes and quantities for which water may be used. The Lieutenant Governor in Council also has the authority to reserve water and determine the best allocation of the reserved water.

Discussion Draft Provisions

a) General Shortages

Albertans indicated that the "first in time, first in right" principle, while it may not be perfect, is still the best and fairest system we have. However, the public did suggest change in the system may be necessary where water is sparse or where the needs of smaller users and junior licensees are not addressed.

During general shortages "first in time, first in right" would apply. This "first in time, first in right" principle will continue under the Discussion

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Draft. This means that in times of general shortages, senior licensees are entitled to their supply of water ahead of more junior licensees. This protects existing rights and maintains an objective basis for determining priorities. The principle has served Alberta well for over a century and continues to be applied in other jurisdictions.

The Discussion Draft also allows for specific water conservation and management objectives to be identified through water management planning programs. Conditions can be attached to licences to reflect these objectives. The Discussion Draft continues to allow unallocated water to be reserved until basin information has been obtained to determine how the unallocated water should be allocated. The Discussion Draft also allows for licence holders to enter into voluntary agreements to share water.

A transfer system for water licences, with appropriate government review and control, will allow water to be reallocated over time to address changing basin needs. This is one of the key benefits that would result from the implementation of a transfer system (see Transferability pp. 25-28).

b) Priority of Rights Related to Instream Needs/ Instream Objectives

When Albertans provided comment regarding priorities, often instream flow needs were identified as a top priority.

The proposed policy is that licences issued to the Crown for instream needs and instream objectives will take precedence over licences issued under the new legislation. Licences for instream needs and instream objectives will not take priority over existing rights except where existing terms and conditions have been included in existing licences to protect instream flows. In areas where there is concern about instream protection due to conflicts with existing uses, the Government can, over time, work to reallocate some water rights through the transfer system.

c) Emergency Shortages

Albertans expressed concern about how water should be allocated during water shortages or droughts. Some said they see no management flexibility during times of water shortage.

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Others suggested establishing priorities of use in times of shortage with criteria and metering to support planning and rationing.

Albertans expressed concern about the ability of the current priority system to deal effectively with emergency shortages. Some people indicated support for reversion to the seniority right of licences during water shortages to allow water sharing during emergencies. Others suggested that during times of drought, allocations should be reduced across the board, either through equal reductions, or through a system of proportional reductions based on the priority of water use.

The Discussion Draft contains specific provisions to address emergency situations. The Lieutenant Governor in Council may determine when an emergency situation exists, using such criteria as severity and length of drought, number of water users affected and potential economic and environmental impacts.

What factors do you think should be used to decide when an emergency exists?

When emergencies are declared, the principle of "first in time, first in right" would be superseded. Holders of existing water licences affected by the suspension of the "first in time, first in right" principle may be eligible for compensation.

Where possible, a pre-determined plan for priority of use and sharing would be put into action. These plans could be developed through water management planning processes (see Water Management Plans pp. 9-12) and would take into consideration regional and local needs. Where no plan exists and an emergency has been declared, the Lieutenant Governor in Council would decide the priority of use and sharing of shortages, taking into account both local and regional needs. Since all uses, including diversions and instream protection are affected in times of extreme shortages, all uses would have to be considered.

NO EXPORT OF WATER

Albertans sent a clear message: no export of water. The public felt there should be no sale of water outside Canada. Some members of the public did contemplate the possibility of exporting water if very specific conditions were met. However, the majority of Albertans do not support the export of water and they want the prohibition against exporting water specifically set out in legislation.

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Existing Alberta Government policy states: "Alberta will not be party to any undertaking for the possible export of water beyond Canadian borders. The priority of water use and allocation is based firstly on provincial, secondly on interprovincial, and finally on national considerations, and will not be influenced by international considerations".

The Government aims to strengthen its commitment to conserve and manage water for use by Albertans while recognizing the province's jurisdictional responsibilities. A provision has been included in the Discussion Draft stating that no licence may be issued for the purpose of transferring water out of Alberta. Further, it also states that any change to this policy would require full Government approval through legislative changes.

This restriction does not apply to processed, municipal or treated water, which will be defined in the regulations. All licence applications for processed, municipal or treated water would have to comply with all the licensing requirements of any other use of water.

INTERBASIN TRANSFER

Most Albertans did not support interbasin transfer of water in order to ensure water quantity. Objections to interbasin transfers were based on concerns about possible ecosystem disruption/contamination and potentially unpredictable and irreversible effects on the ecology of the affected region. Others opposed interbasin transfers because of their concern about possible bulk exports of water. People also supported the prohibition of interbasin transfers in legislation. Some of the public supported interbasin transfers, especially where basins are fully allocated.

Existing Alberta Government policy states: "Water in each major river basin must be fully and efficiently utilized before interbasin transfer could be considered".

In response to the concerns expressed by Albertans about the consequences of interbasin transfers, the Government has confirmed that there will be no transfers between major river basins, unless there is full Government approval through legislative changes.

This policy addresses concerns regarding large transfers of water from one major basin or geographical area of the province to another. There have also been concerns about smaller transfers of water between sub-basins. Such projects would be subject to the provisions of the

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Discussion Draft and could be considered under the provisions of the Environmental Assessment Process.

TRANSFERABILITY

Albertans were divided on the topic of transferability of water rights. Some people felt transferable licences would increase the flexibility of the licensing system and would free water for other uses. Allowing the transfer of water rights could also provide water for basins that are over or fully allocated and take the pressure off the priority system. Others felt that licences should not be transferable since that may create speculation in water rights. Many Albertans commented that if water rights are made transferable, the Government should closely monitor the system and have controls in place.

Albertans supported the limiting of water rights transfers to within river basins, sub-basins or aquifers. Other people suggested that transfers only be allowed if they conform to river-basin plans. Some people suggested that the province ought to benefit from water rights transfers in the form of a transaction fee or rent, or some portion of the water right. The fee could offset some administrative costs. Some Albertans suggested transfers could be restricted to specific locations, sectors or uses to ensure appropriate control.

Overall, there was more public support than opposition to the proposal that water rights be transferable. Albertans identified no alternatives to a market-based approach for transferring water licences.

Under the *WRA*, a licence attaches to the specific land or project. A water licence can be transferred to the new owner of the land or project, as long as the water is put to the same use. In addition, all or part of an existing water licence can be transferred to a new user, by expropriation if necessary, as long as the purpose of the new water use is higher on a specified list in the *WRA* to that of the existing purpose. In a situation involving expropriation, compensation must be paid.

The Need For Transfers

The Government recognizes the need to improve the water rights transfer system. Currently it is very difficult to accommodate new or alternative users in fully allocated basins. It is also very difficult to encourage existing users to modify their systems to allow for more effective water conservation and management, including instream protection. A transfer system is a flexible way of allowing changes in water use priorities, encouraging water conservation (see Water Conservation pp. 34-38) and allowing more effective water management.

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Only those who hold a water licence could transfer all, or part, of a water right. Users who depend on a licensee to deliver their water could not participate in the transfer system without the consent of the licensee. The transfer system would apply to existing licences and would be voluntary.

Duration (Temporary or Permanent), Review and Control of Transfers

Some Albertans expressed concern that some people may sell their water rights without full knowledge of the consequences and then be unable to get these rights back. There was extensive comment by Albertans regarding the terms and conditions under which water licences should be transferred. There was broad support for a review of all transfers prior to implementation. The suggestion was also made that each transfer should be subject to an environmental impact assessment.

Temporary and permanent transfers are necessary to ensure an effective transfer system. This flexibility would allow the transfer system to meet the needs of each situation.

Should transfers be available on both a temporary and permanent basis?

A review of all proposed transfers would be required to protect the public interest. Relevant criteria would thus be considered before a transfer was approved. Criteria would likely include: possible effects on other water users; consideration of approved water management plans; consideration of provincial, regional and local water management policy or objectives; possible effects on the aquatic and riparian environment; and possible conflicts with established instream needs or instream objectives.

Criteria could also address restrictions on changing the use of water or limiting it to the same purpose. However, limiting transfers to the same purpose is restrictive and could diminish incentives for transfers and prevent some reallocation of water to different purposes over time. Criteria could address restrictions on transfers between basins, which would be consistent with the approach of managing water on a basin

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basis. Such restrictions might be needed, for example, if too many transfers were proposed to upstream locations, or if transfers interfered with flows for riparian users, instream needs, instream objectives and apportionment obligations.

If an existing licence with no specified term (expiry date) is transferred to a new user, should a term be added?

Does it make a difference whether a licence, with no specified term, which is being transferred to a new user, is for the same purpose or for a different purpose?

The review of proposed transfers would be intended to encourage conservation and wise management of the water. The review process should be similar to the review process used for applications for new licences. The review could then be done by the same regulatory body to ensure coordinated and consistent allocation decisions. Participation in the process would be encouraged through a referral system to other Government departments and agencies and opportunities for public input to make sure regional and local concerns are addressed. As this is a new system, the Government intends to proceed cautiously with the initial review process for transfers.

Incentives to Transfer

Recognizing the benefits of a transfer system and to encourage its use, there must be incentives to transfer water. Allowing the voluntary sale of water rights at fair market value would provide such incentives. It would also allow for the recovery of costs incurred in implementing conservation measures or changing operating techniques.

Possible speculation is a concern voiced by the public. The review system proposed will provide for some checks on transfers. Concern over water speculation could also be addressed by charging a fee for any transfer.

Society will benefit by allowing new users to obtain water in fully allocated basins. A transfer system would also allow the Government to obtain some of the water held under existing licences for instream protection, by withholding a percentage of water on transfers.

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Should the Government have the right to withhold a set percentage of water for reallocation? If so, what percentage should be withheld?

RIPARIAN OWNERS OR OCCUPANTS

The *WRA* replaced the common law approach of riparian rights, which arose in England and was adopted in eastern Canada. Over the years the extent of the impact of the *WRA* on riparian rights has been very uncertain. In response to this uncertainty, provisions have been included in the Discussion Draft to clarify that:

- ▶ Riparian owners or occupants may use surface water for "household and related purposes", as defined in the Discussion Draft (see Household and Related Purposes pp. 19-20), without a licence, but have no further rights with respect to surface water.
- ▶ A riparian owner or occupant may only start a civil action over water flow where there is interference with household use as a result of an unlicensed or unauthorized diversion of water.
- ▶ Riparian owners or occupants may not start a civil action against licensees who are in compliance with their licences. The priority system will provide the necessary protection.
- ▶ Engaging in activity that results in the diversion of water, including drainage and flood control activities, requires an approval under the Discussion Draft.

Discussion Draft provisions do not affect the rights of riparian owners or occupants regarding accretion and access under the common law or other statutes. These issues relate to land ownership and property law, which are not within the mandate of water resources legislation.

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ABORIGINAL WATER ISSUES

The majority of public comments on aboriginal issues were in relation to aboriginal water rights claims. Some Albertans suggested legislation could clarify aboriginal water rights issues to try and prevent future litigation.

Alberta's Aboriginal people have a substantial stake in water resource management. The Alberta Government is mindful of the concerns of Aboriginal people and will consider their interests through the development of water management plans and by continued provision of services.

The Alberta Government has developed the following position on this issue:

"Aboriginal water rights and ownership of river beds are subjects of continuing review and consideration from a legal and constitutional point of view. These issues, in various forms, are before the courts in Alberta and other parts of Canada. The position of the Crown in right of Alberta is that alleged water rights and alleged rights to river beds, if they ever existed, were extinguished by competent legislation of, and executive action by, the Crown in right of Canada.

The Crown in right of Alberta further takes the position that by the provisions of the Constitution Act, 1930 and the Alberta Natural Resources Amendment Act, 1938, the water rights and rights to river beds passed to Alberta along with the constitutional jurisdiction over such rights. Such rights are now subject to the provisions of the Alberta Water Resources Act, and the Alberta Public Lands Act."

The Government continues to maintain this position. It will also continue the commitment to work cooperatively with Aboriginal people regarding uses of water within the province, while recognizing the lead role of the federal Government with respect to Aboriginal matters.

APPROVALS AND LICENCES

The system of issuing licences for water use is based on a number of key provisions in the *WRA* that will be continued. Activities in water bodies will also continue to be regulated. One new addition is a preliminary certificate which is issued where there is a promise given to issue a licence once certain other requirements have been met. Approvals, called permits under the *WRA*, will be required for any “activity” as defined in the Discussion Draft.

APPROVALS

Albertans showed strong support for the creation of an application process to require approvals for drainage activities and protection of wetlands. Some comments focused on the need for: acceptable application requirements; a consistent approval process; and stricter enforcement and control of activities around lakes.

Currently, permits are required to work in water or within the 1:100 year flood plain. In the Discussion Draft, approvals, not permits, are required for specific activities.

Approvals will be required for “activities” such as the construction of bridges and pipeline crossings which may impact water bodies, works for flood and erosion control and drainage. They will be issued for a specified period of time based on the nature of the activity. When an activity is completed, the approval holder must provide Alberta Environmental Protection with certification that the terms and conditions of the approval have been complied with. Powers of amendment, cancellation and suspension have been included in the Discussion Draft.

LICENCES

Under the *WRA*, licences are required to: divert and use water for specified purposes; impound water for specified purposes; use water in its natural state for specified purposes; or divert water, otherwise than by impoundment or storage, for specified purposes. Generally, the Discussion Draft requires a licence for diversions of water.

The majority of licences are now issued without a term. The idea of issuing licences for a term is presented for public discussion in the following section. If terms for licences were established, the Crown would have to show why a licence should not be renewed when the term is to expire.

In general, licence priorities will be based on the application date (see

APPROVALS AND LICENCES

Priority of Rights pp. 20-23). New and existing licences could be transferred if a transfer system were to be implemented (see Transferability pp. 25-28). The Discussion Draft includes powers of amendment, cancellation and suspension for licences.

The Discussion Draft also allows for issuing licences for the temporary diversion of water. These “temporary diversion licences” will be issued for short periods of time and provide only a limited right to divert water, without any priority of rights.

Term

Albertans suggested that while there may be need to review licences periodically, water users should have secure access to water. Many Albertans demanded that a new system of allocation be fair.

Some of the public suggested the length of term for a licence should consider the need for a secure supply of water over the life of the project. Others supported the provision of licences for a fixed term and argued that licences should never be given in perpetuity.

Currently, licences are generally not issued for a term. The Minister may cancel a licence where a licensee has ceased to exercise any of the rights guaranteed under a licence, the licensee has breached a substantial term of the *WRA* or licence, the licence was issued in error or there was fraud on the part of the licensee. The Minister can also cancel or amend a licence where water has been wasted although the word “waste” is not defined in the *WRA*.

Albertans felt there must be an opportunity to review existing and new licences. Some people suggested that water licences should be issued for a fixed term with allowance for periodic review and renewal. Many Albertans commented that they felt the periodic review of licences would ensure the wise use and conservation of water.

The Discussion Draft calls for licences to be issued with terms. Normally, the term length will have to provide a reasonable level of long-term security to licence holders. However, where such factors as the life of the project, specific basin requirements, purpose of licence or investment return period make a short term more appropriate, such a term could be provided for in the licence.

When a licence holder applies for a renewal, a review based on established criteria would take place. The Government is committed to ensuring there is reasonable security for licence holders. The Crown must establish reasons, based on specified criteria, as to why a licence should not be renewed. Reasons for non-renewal include issues of broad public

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interest, instream protection (see Instream Protection pp. 12-15), or if specified in an approved water management plan. A renewal would not be denied on the basis that a new water user is seeking a licence in the area. The Discussion Draft sets out the requirements for review and renewal. Because of the importance of these decisions, there will be an avenue for appeal.

Do you think all new licences should be issued for a specified term (with an expiry date)?

If you think there should be terms, how do you think the length of the term should be determined?

Preliminary Certificates

When an application has been made, the Director may issue a licence or may require that certain conditions be met prior to a licence being issued. In the later case, the Discussion Draft allows the Director to issue a preliminary certificate. This certificate will include a commitment to make a specific allocation of water once the conditions are met. Conditions could include a requirement to comply with the terms and conditions of an approval that has been issued, the need to secure a right of way or the need to secure the use of another person's works. The Discussion Draft includes provisions for the extending, amending, and cancelling of preliminary certificates. Preliminary certificates replace the interim licence under the *WRA*, and make it clear that a user will not obtain a water right until all the conditions specified in a preliminary certificate are met and the final licence is issued.

When a preliminary certificate has been issued, its holder must submit a certificate of completion indicating that all conditions have been met, before a licence will be issued. The Director will have the discretion to require an inspection.

Once the certificate of completion has been submitted, a licence will be issued incorporating the provisions of the preliminary certificate. The Discussion Draft empowers the Director to cancel or suspend a licence if the certificate was fraudulently completed or filed, or if false information was knowingly provided regarding the certificate.

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A preliminary certificate can be extended for up to 2 years. At the end of this period, certificate holders must reapply for a licence and will lose the priority provided by the preliminary certificate.

APPEALS

Albertans support the institution of an appeal process to allow a person the opportunity to present his or her concerns. Specifically, some people suggested appeals for both sides that are rigorously set out in legislation.

The Government recognizes the need for an appeal process to provide a check and balance on the decision-making process.

The Discussion Draft sets out when an appeal can be initiated. Generally, Directors' decisions can be appealed. These include decisions to: issue or amend an approval, preliminary certificate or licence; suspend or cancel an approval or licence; issue a water management order or some enforcement orders; or approve or refuse a transfer.

Appeals will be heard by the Environmental Appeal Board (EAB) established under the Alberta *Environmental Protection and Enhancement Act* (EPEA). Panels of Board members with specific expertise, including individuals with expertise in water management, will be chosen to hear appeals.

Under EPEA, an EAB panel makes recommendations to the Minister, who can support, change or reverse the original decision. The Minister's decisions and EAB's report will be made public.

The right to appeal to the courts on matters of law and jurisdiction remains.

There are provisions to address frivolous appeals and to avoid the duplication of appeals. To support fairness, the panel may order any of the parties to pay the cost of an appeal. This can include the panel's administrative costs and the other party's preparation costs but does not include compensation.

What kind of decisions should be appealable?

WATER CONSERVATION

Water conservation was one of the more frequently discussed topics throughout the public consultation process. Albertans were generally supportive of the need for water conservation activities but there was little agreement about which approaches to water conservation would be most effective.

Albertans typically viewed water conservation in terms of either increasing water use efficiency or reducing waste. Water conservation was also seen as a means of improving water quality and increasing environmental protection by focusing on the maintenance of instream flows, water quality and aquatic ecological process(es). Most commonly, water conservation was seen as an effective way to reduce or solve problems of water shortages, either when short-term problems arise or when basins become fully allocated.

The *WRA* does not include provisions that define or promote water conservation. Nor does the *WRA* provide links to other legislation to allow for the development of cooperative water conservation incentives. However, numerous policies encourage water conservation. In northern Alberta, for example, cooperation among the affected public, industry and Government led to establishing water recycling guidelines for in-situ oil sands projects. In southern Alberta, Alberta Environmental Protection is rehabilitating water management headworks systems and the Irrigation Districts' main canals and distribution systems to reduce leakage. Generally, public water conservation is encouraged through educational and other programs.

Water conservation can also be encouraged by levying charges on water delivery and use. Currently, nominal licence fees are charged when a licence application is made. These fees are only levied when the water licence is issued. The revenues generated through these licence fees do not cover the costs of processing applications. As well, Alberta Environmental Protection has "use of works" agreements which include water delivery charges for projects operated by the Department. These charges, based on water volume used, reflect the cost of delivering water to consumers. Currently, the only direct water charges are annual royalties paid by hydroelectric energy producers.

MECHANISMS TO SUPPORT WATER CONSERVATION

Albertans suggested a variety of mechanisms to encourage water conservation, including: education; new research and technology; licensing and enforcement; metering; and pricing of water.

WATER CONSERVATION

Broadly defined, the goal of water conservation is to recognize the value of water and promote its wise and efficient use. The following options provide some ways to support water conservation. Further public response and comment is sought on these options.

Transferability of Water Rights

The incentive to conserve water is a key benefit of having a transfer system for water rights. The creation of such a system would give licence holders a greater interest in how they use and manage water. If these transfers are permitted, licence holders would have an incentive to become more efficient and then transfer the surplus water (see Transferability pp. 25-28).

Programs

Most Albertans feel that water conservation can best be achieved through education rather than using laws and regulations. Education was seen as the way to develop an informed public able to recognize the true value of water and thus be encouraged to start conserving, to make better decisions and offer better input. Albertans also suggested increased use of water efficient technology and additional research and development as appropriate means for achieving water conservation.

Educational programs and other incentive programs will continue to play an important role in increasing public awareness of water conservation issues and encouraging water conservation practices. Programs that promote research and new technologies will also lead to encourage more efficient use of water. The Discussion Draft includes provisions that support education and research.

As numerous Government departments and agencies have responsibilities that impact on water management, there are opportunities for additional cooperation and coordination on conservation issues to ensure common goals and practices. The Discussion Draft includes provisions that support cooperation between Government departments and the governments of other jurisdictions.

Incentives or requirements for water conservation could continue to be tied to various Government assistance programs. Water suppliers could also be encouraged to adopt conservation-based rate structures and require their users to adopt appropriate conservation technologies and practices.

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Additional or adjusted programs could encourage the measurement of water, through the use of meters and other measures by both licence holders and the water users served by licence holders. Measuring and reporting is essential to good water management. Incentives to measure water use would be tied to financial assistance programs. The Discussion Draft allows for the development of programs.

Requirements for New Licences

Albertans supported a more active approach to water conservation through licensing. Some people felt that, as a condition of all water withdrawal licences, applicants must demonstrate use of best available water conservation or recycling technologies in system design. Others suggested that priorities for water use should ensure that the strictest conservation measures have been implemented. Generally, Albertans supported the idea that conservation and protection requirements should be clearly spelled out in licences granted for groundwater and surface water use.

The Government agrees conditions encouraging water conservation should be included in licences. Government could also request conservation measures be included in licence applications.

The following three options describe different economic incentives that could encourage conservation and establish the principle of user pay.

Albertans were generally supportive of the concept of user pay for water.

Administrative Fees

Although Albertans support the idea of user pay, where individuals pay in accordance with the benefits received, very few people specifically commented on licence fees. The comments on increasing licence fees were mixed. Some Albertans supported higher fees. Others voiced concern about the potential effects on water users and asked to be involved in the process to establish a fee schedule.

The Discussion Draft includes provisions for levying charges related to the administration of water licences. Regulations would establish the rate structures. These administrative fees could include a fee for the licence application form and an increase in the licence fee structure. Administrative fees could also be applied to the transfer of licences.

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Licence fees would continue to be based on the volume of water allocated under a licence and would only apply when a successful application is made. These licence fees would not affect existing licence holders, except those who had licences for a specified term and who might be required to pay fees at the time of renewal. Higher fees for new licence holders would encourage licensees to request only the amounts of water they need.

Use of Works Agreements

Many Albertans feel the people who enjoy water services should pay their full share of the costs of providing these services. Others were more direct, suggesting the user pay principle should be implemented immediately. More specifically, comment was made that, to the extent that individual users make demands on such publicly-funded infrastructure, they should be included in such a pricing scheme.

Use of works agreements are negotiated with water users who withdraw water from projects operated by the Alberta Government. These agreements include rate structures that cover some costs associated with delivering water to specific users. The rate structure could be revised to better reflect the demands that each user puts on the system or could be changed to cover more of the costs of water delivery. Another factor considered when establishing a rate structure is the public benefit of these water management projects. The greater the public benefit, the less that specific water users would be required to pay for costs associated with delivery.

Direct Charges for Water or Royalties

Albertans indicated that although water pricing is a contentious aspect of water conservation, many supported the philosophy of user pay and broader use of water pricing. Some of the public suggested that when you have to pay, conservation and proper use will follow. Some people feared water pricing would become a penalty, not an incentive, excluding the poor and increasing food costs.

Albertans were divided as to whether water users should actually have to pay an extra charge, like a royalty, for the water they consume. Some people expressed concern that a water royalty is simply an attempt to generate new revenues. Some Albertans called for the

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imposition of an annual fee based on the volumes of water consumed, so the fees would reflect the value of water that is no longer available for re-use further downstream. Albertans disagreed as to whether royalties should be tied to specific end uses or be universally applied.

A direct charge or royalty, based either on licensed water volume or amount consumed could effectively promote conservation. For example, a direct charge for potable water being used for oil field injection could be levied. It may, however, be difficult to administer such an approach.

Public input on this approach and its implications is still needed. The Government, through the Member of the Legislative Assembly appointed Committee reviewing the province's role in irrigation infrastructure, is also obtaining input on the use of direct charges for water. Recommendations on this issue will be made to the Government upon completion of the Committee's review.

Are any or all of these six options an effective way to encourage water conservation? Which option(s) are most valuable? Which option(s) are least valuable?

Are there any other ways the Government can encourage water conservation?

PROGRAMS AND PROJECTS

PROGRAMS

Programs are important tools for achieving Alberta's water management goals. They can support objectives related to educational training, technical assistance and project construction. Through its programs, the Government is committed to ensuring there is adequate information to reduce the risks from natural events such as flood and drought, and to ensure a high level of environmental quality. The following are some key program areas.

Data Collection

Albertans frequently mentioned the role of monitoring, data collection and the use of the computer in data analysis in relation to water management. The public expressed strong support for using the best environmental data and modelling tools. Rigorous, regular monitoring programs were felt to be essential in developing good databases which should be shared. Albertans also expressed appreciation for the predictive ability of computer models and how their use can enhance the ability to make better decisions.

The Discussion Draft empowers the Minister to compile, study and assess information. Criteria to determine the priorities for data collection may include: public safety; legislative requirements; interjurisdictional requirements; operational requirements; public policy; inventory; water quality; water supply investigations; and water allocation. The Discussion Draft also allows for continued cooperative agreements with the federal Government in order to: measure stream flow, water levels and precipitation; conduct investigations; and collect and publish data. These agreements allow for sharing the cost of data collection.

The goal is to make comprehensive data available to the public in an efficient and cost effective manner. This will include improving electronic access to data and expanding the range of databases. In accordance with the principle of user pay and the Government's commitment to self-policing, users could be required to pay a greater share by: 1) having the Department collect data and the user pay; 2) establishing cost-sharing arrangements; or 3) having users collect their own data.

Flood Damage Reduction

Albertans expressed two opposing positions regarding flood control projects. One view was that there should be more projects and funding available to protect and develop arable land in flood prone areas. The other view was that land development in flood-prone areas should be controlled to minimize flood damage. Some people felt that people who chose to

PROGRAMS AND PROJECTS

develop in floodplains should not be compensated. Others suggested more cooperation with local governments and the public is required for effective floodplain management.

Some Albertans specifically indicated support for the Canada-Alberta Flood Damage Reduction Program and supported its adoption in legislation. In general, there was support for controlling developments in floodplains, land-use planning and the implementation of floodplain management provisions through legislation.

Alberta Environmental Protection is heavily involved in protecting Albertans from the damaging effects of floods. The Department has a flow forecasting and flood warning system and a regular program of river ice monitoring to forecast and manage ice jams. Discussion Draft provisions will support the Department's ongoing responsibilities in these areas.

In 1989, Alberta entered into an agreement with the federal Government which initiated the Canada-Alberta Flood Damage Reduction Program. Under the Program, urban areas subject to flood damages are identified and non-structural prevention measures such as land use planning, zoning, flood proofing and flood preparedness are encouraged. The Program has three main components: 1) identify and map flood risk areas in urban communities across Alberta; 2) increase awareness of flood risk among the general public; and 3) regulate new development in these flood risk areas using federal and provincial policies.

The Government's policy is to ensure the new legislation continues to allow Alberta to enter into and implement similar cooperative agreements. It also intends to work with municipalities to introduce flood damage reduction measures in designated areas. This involves recognizing the specific needs of each community.

Although non-structural solutions to flood damage are encouraged, in some cases structural solutions are necessary. The Discussion Draft allows the Government to continue undertaking such projects in cooperation with the federal Government and local governments. The Minister will be empowered to designate the flood risk areas. This will ensure that the Government's commitment to public safety is met.

Drought Mitigation

Albertans comments on droughts focused, primarily, on how water would be allocated and which uses would receive priority. Several comments emphasized that the role of the

PROGRAMS AND PROJECTS

provincial Government during periods of water shortage must include a very firm but equitable management policy which could be included in legislation. Several Albertans recommended severely restricting development in dry or drought prone areas. Others recommended that the Government encourage the conservation of natural areas, especially wetlands, as a means of balancing both water excesses and water shortages.

Currently, there are no specific provisions on drought mitigation. Generally, drought mitigation is dealt with through water management planning and programs.

The effects of droughts will be mitigated through the use of long range water management plans (see Water Management Plans pp. 9 -12) and with ongoing programs, as required. As well, the Discussion Draft includes provisions for: administering priority of rights during times of shortages; allowing agreements to share water; and declaring emergencies.

Dam Safety

Albertans provided few comments on the issue of dam safety. Those who did comment on dam safety spoke favourably of the Government's current efforts to study, monitor and regulate dam safety. Several people commented on the need for properly tested emergency preparedness plans.

Alberta Environmental Protection currently administers the Dam Safety Program to ensure that dams are built, operated and maintained in a safe manner. Dam owners are responsible for the safety of their own structures and will continue to be responsible under the Discussion Draft.

The Government will continue ensuring public safety through the Dam Safety Program. The existing regulations will be reviewed and updated and could include such provisions as: first filling; notification of start of construction; independent inspection and reporting; review boards; and instrumentation. Provisions in the Discussion Draft will require review and approval of dam safety requirements when applications for licences are made, for defined projects. Safety requirements can also be established through licence conditions and through the issuance of water management orders. It will be an offence to fail to keep works in a proper and safe condition.

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PROJECTS

Albertans provided a wide range of comments relating to water management projects. The public held diverse views, reflecting regional concerns and conditions. The majority of the public supported the development of more water management projects, but they also made it clear they want these projects to maximize benefits, be economically justifiable and have minimal environmental impact. There was a general feeling that projects should be managed to promote conservation through better efficiency.

The Alberta Government has long been involved in the development and management of a variety of water management projects. The intent is to support the province's overall economic and social goals. In southern Alberta, water management projects generally supply water for the diverse needs of a semi-arid but fertile area. They also enable Alberta to meet interprovincial flow level requirements. Projects in central and northern Alberta mitigate flood and erosion damages and enhance conditions for multi-purpose use of water.

Projects Constructed by the Crown

Many Albertans thought the Province should retain control over water management projects because the Government has the necessary expertise and resources. Albertans support the user pay/charging for the use of works concept regarding water management projects.

The Minister currently has the power to construct water management projects. The Government currently owns, operates and maintains many water management projects that: mitigate the effects of flooding, erosion, or drought; enhance water based recreation, fish, waterfowl and wildlife habitat; and promote water conservation. Use of work agreements are negotiated between the Government and water users who withdraw water from Government operated projects. These agreements include charges for delivering water for specific uses.

PROGRAMS AND PROJECTS

Agreements with Local Authorities and Intergovernmental Agreements

The majority of Albertans supported the development of more projects in their regions. However, some people felt that projects should not be turned over to local authorities or municipal governments, since it was felt these bodies are not equipped to manage projects.

The Alberta Government will continue to work cooperatively with local governments and the governments of other jurisdictions, including the federal Government. The Discussion Draft allows the Minister to enter into agreements and to provide grants.

These agreements and grants could support: construction, operation, maintenance, control, removal and replacement of water management works; studies, education and research related to water management issues, problems and solutions; flood control; interjurisdictional water arrangements; and other purposes which directly or indirectly promote sound water conservation and management.

Albertans are concerned over who should pay for the construction and maintenance of water management projects. Some people felt that project funding should be shared between Government and users. Since all Albertans are potentially users/beneficiaries of water management projects, they should all accept some responsibility.

Dividing costs between the province and local governments is included in agreements for specific projects. Local governments then can choose to recover their share of costs from any direct beneficiaries.

REMEDIAL MEASURES

WATER MANAGEMENT ORDERS

Currently the Minister can issue orders to promote the beneficial use of water and to control and regulate the diversion and use of water.

The Discussion Draft allows the Director to issue water management orders to ensure action is taken where there is a threat to the water resource or where proactive measures are required to promote effective water management. Orders may be issued where: waste is occurring; the priority of rights needs to be administered; there is a significant adverse effect on the aquatic or riparian environment, human health or safety or property; or there is flooding.

Specifically, the Discussion Draft allows the Director to order a person to do such things as: investigate the nature of the problem; submit a proposal to the Director for remedial action; remove, breach or destroy a specified works or obstruction; stop water waste; or cease construction. A water management order can also require that an activity, diversion of water or operation of a works be stopped or shut down.

DISPUTE RESOLUTION

Few Albertans commented specifically on the need for a dispute resolution mechanism. There was some mention of the need to create a tribunal to mediate disputes. As well, many people suggested options that build consensus and avoid conflict. Many Albertans stressed the need for a cooperative, common-sense approach to enforcement and water management.

A dispute resolution mechanism could be useful in resolving conflicts where the Discussion Draft has not been contravened. It provides parties with an option to resolve disputes regarding water management, without having to go to court.

Mediation and arbitration are two examples of how a dispute resolution mechanism could be used to encourage effective water management practices. A mediation process allows: the views of all parties to be considered; genuine concerns to be considered rather than legal technicalities; working relationships to be developed; and several concerns to be dealt with at once. Agreement is not guaranteed and only those parties who sign the agreement are bound by it. The

REMEDIAL MEASURES

Discussion Draft allows the Director to appoint a mediator.

What sort of dispute resolution mechanism do you think would be best and should the mechanism be set out in legislation?

Should recommendations made under a dispute mechanism have to be followed?

If a mediator is used, as in the Discussion Draft provision, should the parties have to agree on the mediator or should the Director be able to appoint one?

Who should be a party to the mediation and who should pay for the mediation?

If no agreement can be reached through mediation, what should happen?

ENFORCEMENT

Albertans have expressed an interest in stricter enforcement measures than are currently set out in the WRA. The public finds current policies and practices too weak to be effective. In general, Albertans seek fair, clear, concise legislation which includes some aspect of regional response and increased penalties.

The Government's goal is to achieve the conservation and management of our water resources now and in the future. The first emphasis is on proactive and preventive measures that encourage water users to take responsibility for their actions. In most cases these measures are effective, but occasionally enforcement action is needed to ensure compliance with legislation. The intent is to provide consistently applied, firm but fair, enforcement measures. "Firm but fair" means enforcement responses relate to the offence's severity and clear rules are set out for achieving compliance.

Enforcement is generally the last step in a regulatory process that aims to first identify and prevent potential problems and to quickly remedy problems if they occur.

Investigations

The first step in dealing with apparent contraventions of the Discussion Draft will be the initiation of an investigation. Investigations are used for enforcement purposes where there is evidence of a contravention of the Discussion Draft. The Discussion Draft sets out the powers and duties of investigators, enabling them to collect information to determine if there was a contravention and as well, includes general "right of entry" powers.

Enforcement Measures

Albertans suggested a number of measures to ensure fair, effective and stringent enforcement. Suggestions included the use of notice of violations, withdrawal of licences, seizure of irrigation equipment, stop orders and compliance orders, tickets for minor offences and mandatory community service.

The Government will use various enforcement tools to deal effectively with contraventions of the Discussion Draft. These tools include:

► **Enforcement Orders**

Where the Director believes there has been a contravention of the Discussion Draft, the Director can issue enforcement orders requiring a person: to prepare plans to remedy the contravention; minimize or remedy adverse effects on the aquatic and riparian environment; and take other actions the Director considers necessary to facilitate compliance with the order or the legislation. In severe cases, the Director may order the shut down or suspension of an activity or diversion, or the suspension or cancellation of an approval or licence.

► **Prosecution - Offences and Penalties**

Albertans stressed the need for higher fines and stricter penalties for inefficient use of water and the degradation of water quality. The public comment on how to increase fines ranged from the inclusion of a ticket system for minor offences to \$1,000,000 and 2 years in jail for serious offences. The public also expressed their wish to see repeat offenders and continuing offences dealt with harshly.

The Discussion Draft establishes three levels of offences, with corresponding penalties. The penalties are different for individuals and corporations. The most serious offences are those where a person knowingly commits a contravention of the Discussion Draft. These types of offences can result in a maximum fine of \$1,000,000 in the case of a corporation and of \$100,000 and/or, up to 2 years in jail for an individual. The next level is strict liability offences, where the defence of due diligence is available. This defence provides that a person who took all reasonable steps to prevent the commission of an offence will not be convicted of that specific offence. These offences carry a maximum penalty of \$50,000 for individuals and \$500,000 for corporations. Less serious crimes, absolute liability offences, carry a maximum fine of \$250 for individuals and \$1,000 for corporations. Court orders relating to penalties can be used when there has been a conviction before the court and, in addition to any other penalty, an order is needed to require specific actions are taken.

The Discussion Draft provides direction to the courts but the court decides the penalties to levy. For continuing offences, the penalty can apply to each day or part of the day for the duration of the offence.

► **Administrative Penalties**

These penalties are designed to deal with less serious offences such

ENFORCEMENT

as failure to file reports. Administrative penalties provide an alternative to prosecution, which does not involve going to court. To ensure fairness they can be appealed to the Environmental Appeal Board.

▶ **Tickets**

Tickets can also be used for minor offences, and where extensive investigations are not warranted. Failure to pay the fine will result in court action. Tickets will be issued under the *Provincial Offences Procedures Act*.

▶ **Court Injunctions and Court Orders**

The Court of Queen's Bench can issue injunctions where a person is, has or is about to contravene the new legislation. The Director can apply for a Court injunction directing the responsible party to take or refrain from taking a particular action. Those who have suffered or are about to suffer damage from a contravention also have the right to apply for an injunction.

Court orders can be used to compel an individual to comply with a water management order or an enforcement order that has been previously issued by Alberta Environmental Protection.

Liability of Directors, Officers and Public Officials

Under the Discussion Draft corporate directors and officers may be charged with offences committed by their corporation. Public officials may also be held liable.

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